

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

BOBBY SANDERS

PLAINTIFF

v.

NO. 4:05CV12-P-B

SUPERINTENDENT DONALD A. CABANA, ET AL.

DEFENDANTS

**ORDER DECLINING TO ADOPT
REPORT AND RECOMMENDATION OF THE
MAGISTRATE JUDGE**

Upon review of the Report and Recommendation submitted by the United States Magistrate Judge in this case, the court finds that it cannot adopt the findings therein. The plaintiff has alleged that he was involved in an altercation with a known gang member and that he had that gang member and others placed on his “red tag” list. The plaintiff further alleges that gang members paid prison guards to leave cell block doors open – a move that led to an attack on the plaintiff by the very people he had placed on his “red tag” list. The plaintiff received three stab wounds and other injuries from this attack. These allegations state a constitutional claim for failure to protect the plaintiff from harm. As such, the instant case shall be allowed to proceed. The magistrate judge shall issue an order directing process to issue, and this case shall proceed in the same manner as other prisoner conditions of confinement cases.

SO ORDERED, this, the 3rd day of August, 2005.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE